

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-02-KC-658
)	
Southwestern Bell Wireless, LLC)	NAL/Acct. No.200232560031
Owner of Antenna Structure # 1226815 located)	
near Fair Grove, Missouri)	FRN 0004-2495-95
Dallas, Texas)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: September 5, 2002

By the Enforcement Bureau, Kansas City Office:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find Southwestern Bell Wireless, LCC, owner of antenna structure #1226815, apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000) for willful violation of Section 17.51(b) of the Commission's Rules (“Rules”).¹ Specifically, we find Southwestern Bell Wireless, LLC apparently liable for failure to continuously exhibit all high intensity and medium intensity obstruction lighting.

II. BACKGROUND

2. On August 16, 2002, an agent of the Commission's Kansas City Field Office inspected the antenna structure associated with FCC Antenna Structure Registration (“ASR”) #1226815 and located near Fair Grove, Missouri. At the time of inspection at 11:00 a.m., the unpainted structure had no medium or high intensity obstruction lighting in operation.

3. Later on the same date, the agent determined from the Commission's ASR Database that the antenna structure was registered to Southwestern Bell Wireless, LLC. The registration included requirements to maintain a dual lighting system using medium intensity obstruction lighting during daylight operation and red lights and beacon during nighttime operation. At about 12:45 p.m., the agent telephoned the listed contact telephone number for Southwestern Bell Wireless, LLC and spoke to a representative who stated she would check on the situation. The agent also telephoned the Federal Aviation Administration (“FAA”) Flight Service Station (“FSS”) in Columbia, Missouri and found no Notice to Airman (“NOTAM”) had been issued for that antenna structure. Another representative of Southwestern Bell Wireless, LLC telephoned and spoke to the agent. The representative stated that the Southwestern Bell Wireless, LLC Operations Center had not received an alarm on that antenna structure but that a NOTAM had been issued. She further stated that the obstruction lighting on the structure was out as well as the automatic alarm system.

¹ 47 C.F.R. § 17.51(b).

III. DISCUSSION

4. Section 17.51(b) requires that all high intensity and medium intensity obstruction lighting be exhibited continuously unless otherwise specified. According to the antenna structure registration #1226815, this structure is owned by Southwestern Bell Wireless, LLC and is required to exhibit medium intensity obstruction lighting during daylight hours. On August 16, 2002, no obstruction lighting was observed in operation on antenna structure #1226815. Over one hour and forty-five minutes after the lighting was first observed out, Southwestern Bell Wireless, LLC had not notified the FAA of the light outage.² In addition, Southwestern Bell Wireless, LLC failed to inspect its antenna structure lights and associated control equipment in that the structure's automatic alarm system failed.³

5. Based on the evidence before us, we find Southwestern Bell Wireless, LLC willfully⁴ violated Section 17.51(b) of the Rules by failing to continuously exhibit all required medium intensity obstruction lighting.

6. Pursuant to Section 1.80(b)(4) of the Rules,⁵ the base forfeiture amount for failure to comply with prescribed antenna structure lighting is \$10,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁶ Considering the entire record and applying the factors listed above, this case warrants a \$10,000 forfeiture.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁷ and Sections 0.111, 0.311 and 1.80 of the Rules,⁸ Southwestern Bell Wireless, LLC is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willful violation of Section 17.51(b) of the Rules by failing to continuously exhibit all medium intensity obstruction lighting.

8. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days

² The owner of a registered antenna structure must report immediately to the nearest FAA FSS any known improper functioning of any top light or flashing light that cannot be corrected within 30 minutes. *See* 47 C.F.R. § 17.48(a).

³ *See* 47 C.F.R. § 17.48.

⁴ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

⁵ 47 C.F.R. § 1.80(b)(4).

⁶ 47 U.S.C. § 503(b)(2)(D).

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. §§ 0.111, 0.311, 1.80.

of the release date of this *NAL*, Southwestern Bell Wireless, LLC SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the *NAL*/Acct. No. and FRN referenced above. Requests for payment of the full amount of this *NAL* under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁹

10. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE *NAL*/Acct. No. referenced above.

11. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

12. IT IS FURTHER ORDERED THAT a copy of this *NAL* shall be sent by regular mail and Certified Mail Return Receipt Requested to Southwestern Bell Wireless, LLC. 17330 Preston Road, Suite 100A, Dallas, Texas 75252.

FEDERAL COMMUNICATIONS COMMISSION

Robert C. McKinney
District Director, Kansas City Office, Enforcement Bureau

⁹ See 47 C.F.R. § 1.1914.